**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO. 16 OF 2001**
**AND**
**CROSS OBJECTION NO. 22 OF 2001**

1. Special Land Acquisition
Officer(South Goa)
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road,
P.O.Navelim, Salcete Goa, 403 707.

2. Chief Engineer,
Konkan Railway Corporation Ltd.
Rawnfond, near Margao Railway
Station, Margao-Goa.

... Appellants
(Original Respondents)

**versus**

1. Purshottam Bhicu Mulgaonkar
(since deceased) C/o. Dr. Narendra
P. Mulgaonkar, Alto Porvorim,
Bardez-Goa, by his legal represen-
tatives.

2. Smt. Manikbai Purshottam
Sinai Mulgaonkar(since deceased).

(a) Chandrabai Mulgaonkar,
married to Arvind Nerurkar,

(b) Premanand Mulgaonkar, married
to Sunanda P.Mulgaonkar(since
deceased) rep. by L.Rs.

2(bb)Shri Rajesh Premanand
Mulgaonkar(son)

3(bb)Smt.Shubhangi Rajesh
Mulgaonkar, w/o Rajesh
Premanand Mulgaonkar

4(bb)Shri Siddarth Premanand
Mulgaonkar(son)

5(bb)Shri Shailendra Premanand
Mulgaonkar(son)
all majors, r/o Mapusa, Goa.

6(bb)Smt.Laxmi Rajesh Kenkre
(daughter)

7(bb)Shri Rajesh V. Kenkre,
husband of Laximi Rajesh
Kenkre, both major, r/o
House No.53, Rajwada,
Mapusa, Goa.

(c) Sudha Sinai Mulgaonkar,
married to Janardhan V.Kamat.

(d) Sharadchandra Sinai Mulgaonkar,
married to Sulbha S.Mulgaonkar.

(e) Prakash Sinai Mulgaonkar,
married to Shoba P. Mulgaonkar.

(f) Anita Mulgaonkar, married to
Avinash Mulgaonkar.

(g) Anil Sinai Mulgaonkar, married
to Nayan Mulgaonkar.

(h) Uday Sinai Mulgaonkar,
married to Nita U.Mulgaonkar.

(i) Narendra Sinai Mulgaonkar,
married to Swati N. Mulgaonkar.

Mr. E. Afonso, Advocate for the appellants.

Mr. J. P. Mulgaonkar, Advocate for the respondents.

**CORAM: A. P. LAVANDE &**
N. A. BRITTO, JJ.

DATE OF RESERVING :
THE JUDGMENT: 8-2-2005.

DATE OF PRONOUNCING
THE JUDGMENT:23-2-2005.

**JUDGMENT(PER N. A. BRITTO, J.)**

This appeal with cross objections is directed against Judgment/Award dated 15-9-2000 of the learned Additional District Judge, Panaji, by which the learned Additional District Judge(Reference Court, for short) enhanced the compensation from Rs.16/- to Rs.145/- per sq. meter.

2. The parties hereto shall be referred to in the names as they appear in the cause title before the learned Reference Court.

3. Briefly stated, the Government by virtue of Notification issued under Section 4(1) of the Land Acquisition Act, 1894(Act, for short) and

published on Gazette dated 1-8-1991 acquired land for Konkan Railway Corporation for the construction of a new B.G. line between Roha and Mangalore, in village Sirsaim. In that what was included was the property of the applicants admeasuring 30825 sq. meters of survey nos.7/4, 8/2 and 9/3 of Sirsaim village. By Award dated 18-1-1994, the Land Acquisiton Officer after considering several Sale Deeds executed between 30-1-1989 to 7-2-1991 and at prices ranging from Rs.25/- to Rs.48.57 per sq. meter fixed the compensation payable to the applicants at the rate of Rs.16/- per sq. meter, and, being dissatisfied with the said compensation the applicants got a reference made under Section 18 of the Act and thereby claimed compensation at the rate of Rs.200/- per sq. meter.

4. The applicants in support of their case for enhancement examined one Narendra P. Mulgaonkar(A.W.1) and produced two post-notification Sale Deeds. The first is dated 25-5-1992 and the second is dated 19-11-1992, and, after considering the evidence produced by both the parties the learned Reference Court enhanced the compensation payable to the applicants at the rate of Rs.145/- per sq. meter.

5. The appeal has been filed praying that the Award of the learned Reference Court be quashed and set aside. Cross Objections have

been filed praying that they(applicants) be awarded at least Rs.100/- per sq. meter.

6. At the hearing of the appeal/cross objections, on behalf of the respondents two applications have been filed both under the provisions of O.41, R.27 of the Code of Civil Procedure(Code, for short). By first application dated 9-8-2004, the respondents seek to produce four certified copies of Sale Deeds dated 14-8-1990, 12-9-1990, 29-1-1991 and 7-2-1991 pertaining to different survey numbers of Sirsaim village. These Sale Deeds were admittedly the Sale Deeds which were taken into consideration by the L.A.O. for the purpose of fixing the compensation. By the second application dated 11-10-2004, the respondents have sought leave to produce an Award of the learned Additional District Judge, Panaji, dated 18-9-2002 in L.A.C. No.32/95 by which the learned Additional District Judge, relying upon a Sale Deed dated 7-2-1991, has fixed compensation at the rate of Rs.25/- per sq. meter in respect of survey nos. 11 and 22/2 of the same village Sirsaim.

7. It has been submitted by Mr. E. Afonso, the learned Counsel for the Respondents that this Award dated 18-9-2002 is in appeal before this Court, and as far as the first application is concerned it is the submission of Mr. Afonso that the said Sale Deeds, though referred to by the

L.A.O., could not be produced before the learned Reference Court because the Mamlatdar of Bardez did not provide the registration numbers of the said Sale Deeds and as such they could not get certified copies of the same to produce before the learned Reference Court. It is his submission that in case the said certified copies of Sale Deeds are taken on record it will assist this Court to correctly decide this appeal. Mr. Afonso has placed reliance on the case of **State of Rajasthan** v. **T. N. Saheni**(2001 10 SCC 69).

8. O.41, R.27 of the Code provides for production of additional evidence before the Appellate Court, and, Sub-Rule 1 provides that the parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the Appellate Court. But, if -

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court may allow such application or documents to be produced or any witness to be examained to enable it to pronounce judgment or for any other substantial cause, the Appellate Court

may allow such evidence or document to be produced, or witness to be examined.

9. The applications have been made under clause (b) of sub rule (1) of Rule 27, Order 41, C.P.C. In the case of **State of Rajasthan** v. **T. N. Saheni and others** (supra) is is observed that it is always open to the court to look into the documents and for that purpose amended provision of Order 41, Rule 27(b) C.P.C. can be invoked and an application under Order 41, Rule 27 should be decided along with the appeal. The Supreme Court has further held that even if the Court feels that it is able to pronounce the Judgment on the state of the record as it is, and so additional evidence is not to be required to enable it to pronounce the Judgment, if it still considers that in the interest of justice something that remained obscure should be filled up so that it could pronounce its Judgment in a more satisfactory manner, then the Court will look into such documents and it is entirely for the Court to consider the same at the time of hearing of the appeal on merits.

10. In the case of **N. Kamalam**( v. **Ayyasamy and another** ((2001) 7 SCC 503) the Supreme Court has stated that the provisions of R.27, O.41 C.P.C. are not designed to help parties patch up weak points and make up for omissions earlier made and the jurisdiction of appellate court is

restricted to permitting such additional evidence as would enable it to pronounce Judgment. Admittedly, the Award in L.A.C. No.32/95 is still under appeal before this Court and as far as the Sale Deeds are concerned they were there very much before the L.A.O. even before he made the Award on 18-1-1994 and, therefore, nothing prevented the said L.A.O. to have produced the same before the learned Reference Court. It appears that before the learned Reference Court, the respondents made no effort to produce them inspite of the fact that the case for defence evidence was adjourned at least on five occasions and the reason assigned now for non production of the said Sale Deeds was never assigned before the trial Court. In our view, the said documents are not required at all to pronounce Judgment which can be independently pronounced on the basis of evidence adduced by both the parties before the learned Reference Court. We cannot allow the respondents to produce the Sale Deeds before this Court which they very well could have produced before the learned Reference Court. We are, therefore, inclined to reject the said applications.

11. The entire approach of the learned Reference Court in assessing compensation payable to the applicants at the rate of Rs.145/- per sq. meter appears to be erroneous. The only observation which we find has been rightly made by the learned Reference Court is regarding the evidence of income method sought to be adopted by the applicants to prove

enhancement of compensation. The learned Reference Court rightly observed that in the absence of any material having been produced by the applicants as to what were the expenses incurred towards the maintenance of the subject land a bare statement that the annual income was Rs.50,000/- per year could not be accepted.

12. The learned Reference Court has observed that the Award of the L.A.O. in clear terms revealed that the acquired land was within the settlement zone area fully developed with new constructions and was at a distance of about 1 km. from Assonora market. This observation, the learned Reference Court made, inspite of the fact that there was no whisper from any of the witnesses examined on behalf of the applicants, that the acquired land fell in settlement zone.

13. Mr. J. P. Mulgaonkar, the learned Counsel for the Respondents has conceded, and in our view rightly, that the applicants had not produced the Award of the L.A.O. and in the absence of production of the said Award, materials on which the Award was made could not be relied before the learned Reference Court. On this aspect, we may refer to the case of **Chimanlal Hargovinddas** v. **Special Land Acquisition Officer** (AIR 1988 SC 1652) wherein the Supreme Court has stated that a reference under Section 18 of the Act is not an appeal against the award and the Court

cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the court.

14. The learned Reference Court has relied upon both the Sale Deeds produced on behalf of the applicants and then considering that they were post-notification Sale Deeds has proportionately given a reduction of 10% and then again taking reduction of 40% for development has added the price reflected by both and has come to a mean average and has worked out the compensation payable at the rate of Rs.145/- per sq. meter. Here again, we must observe that the approach of averaging the price and that too after relying upon a Sale Deed which reflected the price of land as well as the house existing in it, is wholly erroneous.

15. The Supreme Court in the case of **Bakhtawar Singh and another** v. **Union of India and another** ((1995) 2 SCC 495) has stated that it has repeatedly held that the application of the principle of average price is wrong and illegal.

16. The applicants had examined A.W.2/Shivanand Tendulkar in support of the Sale Deed dated 19-11-1992 by which land admeasuring 300 sq. meters along with a dwelling house of 80 sq. meters was sold, being

part of survey no.332/2-A(Part). This Sale Deed was executed for a price of Rs.550/- per sq. meter.

17. Mr. Mulgaonkar has conceded, and in our view rightly, that this Sale Deed could not be used as a guide to fix the compensation of the acquired land as it represented the value of the house as well as the property. It is pertinent to note that A.W.2/Tendulkar has in terms admitted that he had purchased the land under the said Sale Deed Exh.13 along with the house and which was in settlement zone while the acquired property was agricultural land. Again, he stated that he could not say what was the value of the house which he purchased along with the land. However, he volunteered to say that the house in the said property was in dilapidated condition and further stated that it is possible that half of the value was on account of the said house. We are unable to accept the effort made by A.W.2/Tendulkar to help the applicants. In case the house was in dilapidated condition, the area of the said house would not have been mentioned as 80 sq. meters in the Sale Deed. It is also to be noted that the seller of the said plot/house had himself purchased it by Sale Deed dated 8-1-1990 and then sold it to A.W.2/Tendulkar by Deed dated 19-11-1992. In our view, the said Sale Deed dated 19-11-1992-Exh.13 could not have been used as a guide to fix the compensation payable to the applicants not only because it reflected the price of house as well, but also

because it was a post-notification Sale Deed executed after about 15 months of the date of Notification under Section 4(1) of the Act.

18. Unless the location, the size, shape and nature of acquired land is first found out there is no question of enhancing the price of the same. There is no dispute that the applicants land was situated in Sirsaim village. A.W.1/Narendra has not stated as to what is the distance of the acquired land from the adjoining towns of Mapusa or Bicholim or the market place of Sirsaim. As stated by D.W.1/Anoop Pednekar, Civil Engineer, it was situated at a distance of about 700 meters from the main road(Bicholim-Mapusa road). This distance was mentioned by P.W.1/Narendra as 100 meters, by A.W.2/Tendulkar as 5 minutes walking distance, and by A.W.3/Raikar as 50/60 meters. The learned Reference Court ought to have accepted the evidence of D.W.1/Pednekar that the acquired property was situated at a distance of 700 meters, more so because he was a Civil Engineer and the distance given by the applicants' witnesses differed from one to the other. According to the applicant, there was electricity and water facility available near the vicinity, but, he did not specify where exactly the same were available and one could only presume that they were available along with the said road, if at all contrary to what A.W.1/Narendra stated, A.W.2/Tendulkar and A.W.3/Raikar stated that there was electricity to the acquired land probably meaning thereby that it was available in the

acquired land itself. As far as nature of land is concerned, according to A.W.1/Narendra there were several fruit bearing trees such as mangoes, guavas etc.. A.W.2/Tendulkar stated that he could not say if the acquired land could be compared on the basis of location and nature of land with that of the plot purchased by him. According to A.W.3/Raikar the acquired land was almost on road level with some cashew trees but he could not say whether there were fruit bearing trees in the acquired land. A.W.1/Narendra conveniently did not state whether the acquired land had any building potential or whether it was fit for any construction activity. On the other hand, D.W.1/Pednekar stated that survey nos.7/4 and 8/2 were khajan lands and were fit only for cultivation of paddy with no construction possible and they were below road level by 1.5 meters. He stated that survey no.9/3 which was bharad land was rocky, sloppy and barren and there was a crematorium in it. Infact, it was admitted that only an area of 413 sq. meters was used for the crematorium. D.W.1/Pednekar stated that survey no.9/3 was in an isolated place where there were no houses. This we are inclined to believe because generally crematoria are situated far away from village habitation. He stated that this land had to be cut and brought down in level for the purpose of laying the railway track by a depth of 20-30 meters. He denied the suggestion that the lands were fit for all types of development. The learned Reference Court accepted, as stated by him, that he was associated with the Konkan Railway since 1994 but brushed aside

his evidence as he was not an expert. In our view, D.W.1/Pednekar was a Civil Engineer who was associated with Konkan Railway Corporation from the year 1994 and as such ought to have known the location and nature of the land better than the applicant(A.W.1/Narendra) and his witnesses and his evidence could not have been brushed aside in a manner done by the learned Reference Court. The learned Reference Court appears to have enhanced the compensation payable to the applicants on feats of imagination rather than based on evidence produced by the applicants. The applicants through A.W.1/Narendra had clearly stated that the prices of land in the locality was Rs.100/- per sq. meter. Added to that, there was also a statement of A.W.3/Raikar that the prevailing market rate in Tivim-Sirsaim was Rs.100/- per sq. meter. If that was so, we fail to understand as to how the learned Reference Court could have fixed the compensation payable to the applicants higher than the then prevailing market rate of Rs.100/- per sq. meter. It is the paramount duty of the Courts to subject the evidence to close scrutiny, objectively to assess the evidence tendered by the parties for proper considerations thereof in correct perspective to arrive at reasonable market value. In doing so the Courts ought to ensure that determination of correct market value is neither a windfall to the applicants whose land has been acquired nor to the respondents at whose behest the land has been acquired. It is also to be noted that misplacement or undue sympathy solely on the claimants right to compensation is bound to place

heavy burden on the exchequer to which everyone contributes by taxes either direct or indirect.

19. The only question, therefore, is whether the compensation of the acquired land could be fixed on the basis of Sale Deed dated 25-5-1992-Exh.15.

20. Mr. Afonso, has submitted that the said Sale Deed is in respect of village Tivim and, therefore, could not be used to fix compensation in respect of village Sirsaim. He has supported his submission by placing reliance on the case of **Kanwar Singh and others** v. **Union of India** ((1998) 8 SCC 136).

21. On the other hand, Mr. Mulgaonkar has placed reliance on the case of **Deputy Collector and another** v. **Shri Rajendra V. Deshprabhu** (unreported decision dated 15-10-98) in First Appeal No.77/1997 wherein a Division Bench of this Court relied upon Sale Deed of Korgao village situated at a distance of 4.5 kms. to fix the compensation payable in village Poncarache Bhatt.

22. The Supreme Court in the case of **Kanwar Singh and others** v. **Union of India**(supra) has not laid down any inflexible rule that a Sale

Deed from a neighbouring village cannot be used as a guide to fix compensation for land in another village. What the Supreme Court found in that case is that the High Court had found that the situation and potentiality of the land in the two villages concerned were different. The Supreme Court further observed that generally there would be different situations and potentialities of the land situated in two different villages unless it is proved that the situation and potentiality of the land in two different villages are the same. In the case at hand, both the villages are adjoining one another and separated by a common boundary, and, it is common knowledge that the villages in this State are comparatively smaller than the villages found in the rest part of the country and, therefore, only because Exh.15 was from adjoining village of Tivim, on that count alone, it could not be brushed aside as not furnishing a good guide to fix the compensation for land in Sirsaim village. What should really matter is the distance between the acquired land and the said Sale Deed Exh.15 and the parity of the acquired land vis a vis the land of the said Sale Deed.

23. Mr. Afonso has next submitted that Sale Deeds in respect of Sirsaim village were available and yet the applicants chose not to produce the same and, therefore, relying on the decision of this Court in the case of **Rajendra Shaha** v. **State of Maharashtra**(2004(10) LJSoft 134) has submitted that adverse inference ought to be drawn against the applicants.

We are unable to accept this submission as well of Mr. Afonso because nothing has been brought on record in the cross-examination of the applicant(A.W.1/Narendra) that he had even read the Award passed by the L.A.O. In the case of **Rajendra Shaha** v. **State of Maharashtra**(supra) evidence was brought on record and the witnesses had admitted that there were 4 or 6 transactions of sale and yet the same were not produced before the Court.

24. Next, Mr. Afonso has placed reliance on the case of **Karan Singh and others** v. **Union of India** ((1997) 8 SCC 186 and submitted that the Sale Deed dated 25-5-1992-Exh.15 is a post-notification Sale Deed and, therefore, the same cannot be used to fix compensation for the acquired land.

25. On the other hand, Mr. Mulgaonkar contending that a post-notification Sale Deed could also be relied upon, has placed reliance on the case of **Mehta Ravindrarai Ajitrai and others** v. **State of Gujarat** ((1989) 4 SCC 250) wherein the Supreme Court thought it fit that a post-notification Sale Deed, of 5 months later in point of time from the date of Notification under Section 4 of the Act could be fairly regarded as reasonably proximate to the acquisition, in the absence of any evidence to show that there was any speculative or sharp rise in the prices after the

acquisition. This controversy of a post-notification Sale Deed is not really in issue in the case at hand, but since the learned Counsels on behalf of both the parties have elaborately advanced their arguments, we propose to decide the same.

26. While fixing the market value of the acquired land, comparable sale method of valuation is preferred as the most suitable method because it furnishes the evidence for determination of the market value of the acquired land if it has been sold in the open market at the time of issue of Notification under Section 4 of the Act. One of the factors which is required to be considered while using the comparable sale method of valuation is that the Sale Deed must have been executed at a time proximate to the date of issue of Notification under Section 4 of the Act. It could be before or a little time after. From the decided cases cited before us, the case of **Administrator General of West Bengal** v. **Collector(**AIR 1988 SC 943) appears to be the first where a post-notification Sale Deed came for consideration. The Supreme Court stated thus:-

> "such subsequent transactions which are not proximate in point of time to the acquisition, can be taken into account for the purpose of determining whether as to the date of acquisition there was an upward trend in the prices. Further, under certain circumstances where it is

> shown that the market was stable and there were no fluctuation in the prices of the date in the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value".

27. In the case of **P. Rajan and another** v. **Kerala State Electricity Board and another** ((1997) 9 SCC 330) the Supreme Court stated that post-notification sale in respect of a small extent of land does not furnish any reasonable basis for determination of the market value and compensation.

28. In the case of **K. Padmaraju** v. **Senior Regional Manager, F.C.I.,Hyderabad and others** ((1996) 10 SCC 613) the Supreme Court repeated the observation that Sale Deeds in respect of small plots and post-notification sales are not relevant.

29. The case of **Administrator General of West Bengal** v. **Collector**(supra) was referred to both in the case of **Mehta Ravindrai Ajitrai and others** v. **State of Gujarat**(supra) as well as in the case of **Karan Singh and others** v. **Union of India**(supra). In this case the Supreme Court has stated that in the absence of any evidence of sale of land on the date of issue of Notification under Section 4 of the Act, under certain

conditions the post-notification transactions of sales of land can be relied upon in determining the market value of the acquired land and one of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the value of land during the period of issue of Notification under Section 4 of the Act and the date of transaction of sale which is sought to be relied upon for the purposes of fixing the market value of the acquired land. The Court further stated that if the claimant relies on any post-notification transaction, the burden is upon him to show that the price of the land remained static and there was no upward rise in the price of the land during the period of issue of Notification under Section 4 of the Act and the date of transaction of sale. In the case at hand, the Sale Deed dated 25-5-1992-Exh.15 is about 10 months after the date of Notification under Section 4 of the Act. By no stretch of imagination can it be said that it is proximate to the date of Notification. Moreover, A.W.3/Raikar clearly stated that he was aware that the land in the locality was acquired for Konkan Railway and thereafter he purchased the land. We are told across the Bar that the Tivim Railway Station has been built on the acquired land. The statement of A.W.3/Raikar gives a clear indication that it is with the prospects of coming of the Railway Station or the railway line which has motivated him to buy the land at the price paid by him in the vicinity of the acquired land with the hope that the development prospects would further increase. When a railway project like Konkan Railway comes

to the locality, the lands in and around the proposed Railway Stations are bound to shoot up in their prices on account of future prospects of development. In our view, the view held by the Supreme Court in the case of **Karan Singh and others** v. **Union of India**(supra) is the last word of law laid down by the Supreme Court and has got to be followed. Considering the totality of the facts and circumstances of this case, in our view the Sale Deed dated 25-5-1992-Exh.15 could not be considered as proximate from time angle and, therefore, could not form the basis of fixing the market value of the acquired land, in the absence of the applicants discharging the burden, which was on them to show that the prices had remained static from the date of Notification till the date of Sale Deed.

30. Again, before a Sale Deed can be used as a guide to fix compensation it also must be shown that the land covered by the Sale Deed is same or similar to the acquired land or the size of the plot of the land covered by the sale must be comparable to the acquired land. Unless the location, the size and the nature of the acquired land is first found out there is no question of any comparison being made with the Sale Deed. In the case at hand, the applicants are totally silent as to the nature of the acquired land. A.W.3/Raikar has stated that he had purchased the plot of Sale Deed dated 25-5-1992-Exh.15 falling in the settlement zone to construct a house. He further stated that his plot was at a distance of 50

meters from the main road without specifying which road it was, and, in fact the Sale Deed dated 25-5-1992-Exh.15 shows that the plot of A.W.3/Raikar is having a road on the northern side and if at all he has stated that his plot is at a distance of about 50 meters from the road, it is in order to help the applicants because according to him the applicants property is also at a distance of about 50 to 60 meters from the road, when it is not. One fails to understand as to how the learned Reference Court could ever come to the conclusion that the acquired land was levelled and with electricity and water facilities when the evidence of the applicants witnesses showed otherwise. The learned Reference Court was impressed, in rejecting D.W.1/Pednekr's evidence that D.W.1/Pednekar had stated certain facts, without the said facts being put in the cross-examination of the applicants' witnesses. Regarding this aspect, we may refer to the case of **Periyar and Pareekanni Rubbers Ltd.** v. **State of Kerala** ((1991) 4 SCC 195). The Supreme Court relying on its earlier decision stated that "it is true that the witnesses examined on behalf of the appellants had not been effectively cross-examined. It is also true that the Collector had not adduced any evidence in rebuttal; but that does not mean that the court is bound to accept their evidence. The judges are not computers. In assessing the value to be attached to oral evidence, they are bound to call into aid their experience of life. As judges of fact, it was open to the appellate judges to test the evidence placed before them on the basis of probabilities". Again,

the Supreme Court in the case of **Hookiyar Singh and others** v. **Special Land Acquisition Officer, Moradabad and another** ((1996) 3 SCC 766) stated that the burden of proof of market value prevailing as on the date of publication of Section 4 sub-section(1) notification is always on the claimants. Despite the apathy and blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of the counsel for the State to cross-examine the witnesses on material facts, it is the duty of the court to carefully scrutinise the evidence and determine just and adequate compensation. The Court further observed that the court must not indulge in feats of imagination but, sit in the armchair of a prudent purchaser in open market and put a question whether as a prudent purchaser it would offer the same price in the open market as is to be determined: This should be the acid test.

31. In our view, the respondents witness who was a Civil Engineer had categorically stated that survey nos.7/4 and 8/2 were khajan lands and were fit only for cultivation of paddy and no construction was possible. In fact, he was the only witness who could be termed as an expert, as he was a Civil Engineer, and who was examined in the case and his evidence could not have been lightly brushed aside. Likewise, D.W.1/Pednekar had stated that survey no.9/3 was barren bharad land, rocky and sloppy. The fact that

the respondents had to cut the said land for laying the railway track would not show that the same could not be utilised as a building site because houses can be built on such type of land. However, the fact remains that Mr. Pednekar had also stated that there was a crematorium in survey no.9/3 and the applicants had themselves admitted that at least to the extent of 413 sq. meters were being used for a crematorium. In our view, no prudent purchaser would venture to purchase the acquired land as housing site because part of it was khajan land unsuitable for construction and in part of it there was a crematorium. In fact, in the near future, no prudent purchaser would have ventured to buy a housing site near the existing crematorium. In this view of the matter, the applicants had miserably failed to prove that the acquired land was comparable with the land of Sale Deed dated 25-5-1992 -Exh.15 which was a developed plot purchased for house construction. Time and again, the Supreme Court has stated that the onus of proving that the land was capable of fetching higher value is on the claimant and so also that the L.A.O. proceeded on a wrong premise or principle or that compensation offered by him was inadequate. In our view, the applicants had failed to discharge the said onus and in such a situation we are unable to uphold the Award of the learned Reference Court enhancing the compensation payable, seven times than the price offered by

the L.A.O. Consequently, we allow the appeal and dismiss the cross objections. The Award of the learned Reference Court dated 15-9-2000 is hereby set aside. Parties to bear their own costs.

A. P. LAVANDE, J.

N. A. BRITTO, J.

RD.